(4)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

W.P.No. 2038 / 2000

Petitioner : Ishwari Prasad Sharma,
aged 39 years,
Shri Dhanu Prasad Sharma
Personal Assistant of Mayor,
Municipal Corporation, Durg.

Versus

Respondents : 1. Municipal Corporation, Durg
Through - The Commissioner
Municipal Corporation, Durg.

2. Mayor, Municipal Corporation,
Durg.

3. State Govt. of C.G. Thro' The Secretary, DKS Bhawan RAIPUR.

Affirmed
Sd/-
AR(J)

Added as per Hon'ble court order dated 30.8.2003.
Binuta Advo. 3/9/03

OATH COMMISSIONER
एन एल. श्रीवास्तव
शपथ आयुक्त
DURG (M.P.)

Petition under Article 226/227 of the Constitution of INDIA.

(81)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...W.P...2038/2005..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	06.07.2005 Mr. Ajay Shrivastava, learned counsel for the petitioner. Ms. Sharmila Singhai, learned counsel for respondents 1 & 2. Mr. Akhil Agrawal, learned Panel Lawyer for the State of Chhattisgarh. This petition has been filed by the petitioner seeking the following reliefs, under Article 226 of the Constitution of India: (i) That the respondents be ordered to pay the monthly salary in pay scale of Rs.5000-8000/- as specified in order No.Estt/98/777/9 dated 14.12.1998 passed by Departmental Promotion Committee and by Standing Committee vide resolution No.9 dated 08.01.1996 of the post of Personal Assistant to Mayor. (ii) It be declared that the lesser payment of pay is illegal and unconstitutional as the applicant is entitled for pay of the post in which he is discharging his duties. (iii) That the amount of difference may please be ordered to be paid with interest @18%. (iii)(a) The petitioner may be held entitled for seniority, pay scale and arrears of the pay scale of the post of Personal Assistant to Mayor since the date of discharging the duties of the post consequent to order dated 12.07.1988.	

SP/F

(82)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..WP 2038/2007..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. At the time of argument, learned counsel for the petitioner submits that he confines his relief only to the extent of non-payment of salary to the petitioner on the post of Personal Assistant from 12.07.1988 till date.

3. The facts in brief are that the petitioner was appointed as Lower Division Clerk; thereafter by order dated 12.07.1988, the petitioner was promoted to the post of Personal Assistant subject to passing of the examination of the stenography, within six months. The petitioner thereafter continued ~~to allow~~ to work as Personal Assistant without insisting on certificate of passing of stenography examination. The respondents 1 & 2 by order dated 14.12.1998 confirmed the appointment of the petitioner on the pay scale of Rs.5000-8000/-. The petitioner has been continuously working as Personal Assistant from 12.07.1988 till date. It is informed by the respondents that the petitioner, recently i.e. on 04.07.2005, has been reverted back to the post of LDC. Learned counsel for the respondents has not produced any documents in support of her contention.

4. Learned counsel for the petitioner informed that the petitioner has been working even today as Personal Assistant from 12.07.1988 and he was paid salary of LDC.

5. Learned counsel for the respondents submits that the petitioner was not eligible for the post of Personal Assistant.

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(83)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक व आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	6. The fact remains that the petitioner has worked as Personal Assistant from 12.07.1988 till date. The petitioner could not be deprived of salary of the post of Personal Assistant irrespective of the fact whether he was eligible or not. I am not going into the question of his qualification, as his qualification is not an issue in the present petition. The fact of his working as Personal Assistant from 12.07.1988 is not disputed by the learned counsel for the respondents also. 7. Learned counsel for the respondents further submits that by order dated 13.06.1989, the petitioner was directed to refund the surplus payment on the basis of his working as Personal Assistant because the petitioner was not eligible to work, but admittedly the petitioner was allowed to work. 8. In view of the foregoing, the petition is allowed and the respondents 1 & 2 are directed to make payment of salary of the petitioner as Personal Assistant from 12.07.1988 till date after adjustment of payment of salary, if any, of Personal Assistant has been made, within a period of 3 months from the date of receipt of the copy of this order. No order as to costs. Sd/- Satish K. Agnihotri Judge	

Sarma